

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: W.R. GRACE & CO., ET AL,  
Debtors.

Case No: 01-1139JKF

CCPY

DEPOSITION OF: STEVEN P. MLYNAREK, Ph.D., CIH  
TAKEN: Pursuant to Notice by  
Counsel for Claimants  
PLACE: Johnson, Blakeley, Pope,  
Ruppel & Burns  
100 N. Tampa Street, Suite 1800  
Tampa, Florida  
DATE: June 19, 2003  
TIME: Began: 9:05 a.m.  
Ended: 1:30 p.m.  
REPORTED BY: HELEN BENNETT, Ph.D.  
Registered Professional  
Reporter  
Notary Public - State  
of Florida at Large

1 other, as to whether or not the owners would be  
2 there?

3 A I never thought about it. As I sit here,  
4 it doesn't make any difference, really.

5 Q What grade of Libby ore was used to  
6 produce the ZAI that was in the attic of the test  
7 house?

8 A I don't know.

9 Q Do you know what grades of Libby ore have  
10 historically been used to produce ZAI?

11 A No, I do not.

12 Q Do you know the percentage of tremolite in  
13 the different grades of the Libby ore?

14 A No, I do not.

15 Q Would you like to know the different size  
16 of the tremolite in the ore?

17 A I don't understand your question.

18 Q Would it be of any interest to you for the  
19 purposes of the work that you have done in this case  
20 for you to know the grade of ore that has been used  
21 in the ZAI in the test house?

22 A It would have no relevance to the work  
23 that I did.

24 Q Do you know if the percentage of tremolite  
25 in the different grades of ore varied over time

1 during the production of ZAI?

2 A Do I know that they do? Ask me again.

3 Q Do you know if the percentage of tremolite  
4 in the various grades of ore used to produce ZAI  
5 varied over time?

6 A I believe I did hear that, yes.

7 Q Where did you hear that from?

8 A I believe that I read it on the EPA  
9 website.

10 Q Do you know if each grade of Libby ore  
11 used to produce ZAI was equally friable?

12 A No.

13 Q Did you conduct any friability test on the  
14 ZAI of the test house?

15 A No.

16 Q Do you have an opinion, one way or the  
17 other, as to the friability of the ZAI of -- the  
18 asbestos of the ZAI in the test house?

19 MR. BENTZ: Object to the form of the  
20 question.

21 Q You can answer the question.

22 A I don't have an opinion, at this time.

23 Q As to whether or not it is friable or not?

24 A The definition of friable is questionable  
25 by hand pressure. I didn't do that while I was

1 there, so I don't really have an opinion.

2 Q Have you read anything in the literature  
3 or the EPA documents that you have discussed  
4 previously in your deposition that had anything to  
5 do with the friability of the asbestos in the ZAI?

6 A Not that I recall.

7 Q Do you have any reason to dispute the fact  
8 that the ZAI -- that the asbestos is friable?

9 A No.

10 Q Do you know how the ZAI -- I'm sorry. Do  
11 you know how the tremolite content of the ZAI in the  
12 test house compares to ZAI in other homes that was  
13 using different grades of the Libby ore?

14 A No.

15 Q For purposes of the work that you have  
16 done in this case, do you think it would be  
17 advisable to conduct testing in homes that contain  
18 ZAI made with a different Libby ore -- different  
19 grade of Libby ore, excuse me?

20 A Could you rephrase that?

21 Q For purposes of the work that you have  
22 done in this case, do you think it would be  
23 advisable to conduct tests in homes that contain ZAI  
24 that was using a different grade of Libby ore?

25 A No.

1 Q Why not?

2 A I think that repeating the simulation  
3 that -- that we did would be good from the  
4 perspective of gathering more data that I think  
5 ultimately will just continue to support the data we  
6 have collected. I think it is less critical whether  
7 it is another type of Libby ore or not.

8 Q Do you know how the tremolite content of  
9 the ZAI in the test house compares to the ZAI in  
10 other homes that was produced in different areas?

11 A I don't know.

12 Q Following my previous question, do you  
13 think it would be advisable to conduct testing in  
14 homes that contain ZAI produced in different areas?

15 A I think that would be a suitable thing to  
16 do. I don't think that that would be the driver for  
17 conducting more testing, but that would certainly be  
18 something you would want to add to, if you were  
19 going to do a comprehensive series of tests.

20 Q Do you know whether or not the tremolite  
21 content in ZAI sold in different parts of the  
22 country differed?

23 A No, I don't know.

24 Q Do you understand that the Libby ore was  
25 processed in a plant in Libby and then shipped to

1 various expanding plants around the country and  
2 ultimately made into ZAI?

3 A Yes.

4 Q Okay. So is it fair to say that you don't  
5 know how the ZAI in the -- in the test house would  
6 compare to ZAI found in a test in the Mid -- and,  
7 I'm sorry, a house in the Midwest?

8 A Please ask me again.

9 Q Do you know how the ZAI contained in the  
10 test house would compare to the ZAI found in a house  
11 in the Midwest?

12 A I don't know how the ZAI in the test house  
13 would compare with the ZAI in a home in the Midwest,  
14 but I'm not -- I'm not clear as to the basis of your  
15 comparison.

16 Q Well, how about -- let me ask you a  
17 different way. Do you have -- do you know how the  
18 asbestos found -- the tremolite found in the ZAI in  
19 the test house would compare to -- let me strike  
20 that and ask you this way.

21 Do you have any knowledge of how the  
22 tremolite content in the ZAI contained in the test  
23 house would compare to the tremolite content found  
24 in the house in the Midwest?

25 A Not specifically, no.

1 Q Or any other part of the country?

2 A I have read the -- the asbestos content  
3 found had some range so, in that sense, I -- I  
4 could -- would assume that it would be within the  
5 range. That is -- that is all.

6 Q Do you know if the ZAI in the test house  
7 was sold with a -- with having a bonder applied to  
8 it?

9 A I don't know.

10 Q Did you test the ZAI in the test house to  
11 determine whether or not it contained a bonder?

12 A I don't believe we did.

13 Q Do you know if any ZAI was sold with a  
14 bonder?

15 A I don't know.

16 Q How was Don Van Cura selected to perform  
17 the work activities during the simulation?

18 A Don Van Cura, I believe, was hired by the  
19 W.R. Grace Company, and I don't know how they  
20 selected him.

21 Q Did you participate, in any way, in his  
22 selection?

23 A I believe that Peter Lees and I were told  
24 about him, and we were asked if his credentials  
25 sounded acceptable. I don't recall the specific

1 Q You would?

2 A I would perform Task 12 in another home.

3 Q At the time that you, Doctor, and Dr. Lees  
4 were conducting this study, did you ever talk about  
5 the possibility of doing a simulation in which the  
6 homeowner would have allowed you to cut a large hole  
7 in the ceiling?

8 A Well, as researchers we believe in  
9 collecting more data. That is good. So we didn't  
10 talk about going to another house. This was the  
11 house we had to do.

12 Q Okay. Do you currently have any intention  
13 of conducting similar tests in other houses?

14 A No.

15 Q You have said a couple of times you would  
16 think it would be, as a researcher, a good idea to  
17 collect more data --

18 A Correct.

19 Q -- is that a fair statement? Do you  
20 currently have any intention of collecting more data  
21 relating to ZAI disturbance?

22 A I have no plans to do it at the moment.

23 Q But you agree it would be a good idea to  
24 compile more data?

25 A I'm all for more data.



1 Q Task 14 involves striking the ceiling and  
2 the support members. Why was Task 14 not performed?

3 A Well, most likely we didn't want to damage  
4 the ceiling, and this didn't seem to be that  
5 critical of a task compared to the ones that we did  
6 choose.

7 Q Do you recall, from reading Don Van Cura's  
8 deposition, whether or not Mr. Van Cura ever talked  
9 to Grace's counsel about performing more extensive  
10 work activities during the study?

11 A No, I don't recall.

12 Q Did you -- did Mr. Van Cura ever talk to  
13 you and Dr. Lees about the possibility of performing  
14 more extensive work activities in the test home?

15 A I don't recall.

16 Q Did Don Van Cura have any input in  
17 selecting the 16 tasks that are listed in the  
18 protocol?

19 A I don't -- I don't think he did directly,  
20 no.

21 Q There are a couple of tasks listed in  
22 the protocol. I believe they are numbers 5 and 7.  
23 5 is vacuuming a small area, and 7 is vacuuming a  
24 larger area. Both of these appear, from the  
25 protocol, to have been proposed to have been done in

1 the attic.

2 A Right.

3 Q Do I read the report correctly in that no  
4 vacuuming was done in the test home -- in the attic  
5 of the test home?

6 A No -- No vacuuming of the insulation,  
7 that's true.

8 Q Right. And there was vacuuming done below  
9 in the living space?

10 A Yeah.

11 Q Why was no vacuuming done in the attic  
12 during the simulated work activities?

13 A Well, we had a limited amount of time, and  
14 each test takes -- the test, itself, took 20 to 45  
15 minutes, but then there is two hours of sampling in  
16 advance of it and two hours of sampling after it.  
17 So the most we could do is really two tests a day to  
18 get out to be finished by 6:00 or 7:00 at night.

19 So we were limited in the number of  
20 tests that we could do because of the length of the  
21 tests and because of the length of time we had at  
22 the house.

23 Q The work was done in March of 2002. The  
24 report that was produced in this deposition is dated  
25 January 2003. What was -- what was the source of

1 the previous task?

2 A That was the intent of clearing the air.

3 Q So clearing the air cleared your concern  
4 about the approach not yielding a pure estimate of  
5 exposure?

6 A Yes.

7 Q Said another way, you don't have any  
8 reason to think that the -- that the data that was  
9 ultimately compiled in the report does not estimate  
10 the pure exposure?

11 A Right. I don't have any reason to believe  
12 that. What is implied in the sentence you read was  
13 that if we did an activity and asbestos fibers were  
14 made airborne, it is conceivable that they could  
15 have been airborne when we were doing the next  
16 activity and adding to the fibers that we were  
17 collecting. So it would not have caused any  
18 increase in the concentration of the subsequent  
19 activity, we wanted to avoid that.

20 Q And that was the purpose of moving the  
21 air?

22 A Right.

23 Q Would you agree with me that a homeowner  
24 or a contractor could perform more than one task in  
25 an attic at one time?

1 A Sure.

2 Q And would you also agree with me that an  
3 ordinary homeowner would not have the ability to  
4 exhaust the air in an attic with an air mover like  
5 the one used in this study?

6 A No, not like the one used in this study.

7 Q Dr. Van Cura indicated in his  
8 deposition -- I'll show it to you, if you like me to  
9 -- that the boxes that were moved about in the  
10 simulation of moving the boxes around in the attic  
11 were new boxes. Is that your recollection of the  
12 boxes that were used?

13 A I don't think they were new in the sense  
14 that we went out and bought new boxes. We borrowed  
15 some empty boxes from the homeowner, and, also, from  
16 Roger Morse, the videographer, so that was the  
17 source of them.

18 Q Do you know if any of the boxes that were  
19 used had ever been stored in an attic that contained  
20 ZAI?

21 A I don't know.

22 Q Do you have any reason to think they would  
23 have been?

24 A I have no reason to think that they would  
25 have been.

1 Q What -- why did you decide not to use --  
2 what was the basis for deciding not to use some  
3 other do-it-yourself homeowner?

4 A I think we just felt it was -- it was  
5 better to bring in someone with an understanding  
6 of -- of homes and experience, substantial  
7 experience, because we were going to a stranger's  
8 home and we wanted to minimize the liability issues,  
9 in that regard.

10 Q You testified earlier that it is possible  
11 that there are homeowners or contractors that would  
12 perform these work activities with less care or --  
13 than Mr. Van Cura did in these simulations. Did you  
14 ever -- you and Dr. Lees ever consider doing a worst  
15 case scenario type situation? And by that, I mean a  
16 situation that would have replicated the activities  
17 of a very messy or sloppy contractor or homeowner.

18 A No, we didn't.

19 Q The contents of the shop vacuum that was  
20 used to clean up after the work activities, as I  
21 read the report, were emptied in the garage into a  
22 polyethylene trash bag lining a large box. Then the  
23 vacuum was wiped with a cloth rag. The rag was  
24 placed in the trash bag, and the trash bag was taped  
25 shut. Is that consistent with your recollection of

1 Q Second recommendation is that, "Children  
2 should not be allowed to play in an attic with open  
3 areas of vermiculite insulation". Do you agree with  
4 that recommendation?

5 A Well, yeah, but -- I do, but to me that  
6 implies that they are on some platform and there is  
7 just ceiling joists next to them. And I would be  
8 concerned if there wasn't some type of insulation up  
9 there. To me, a safety risk is falling through the  
10 ceiling rather than vermiculite, but --

11 Q But you would advise that parents allow  
12 their children to play in vermiculite attic  
13 insulation?

14 A To play in it?

15 Q Yeah.

16 A No, I would not advise them to play in it.

17 Q The next recommendation is, "If you plan  
18 to remodel or conduct reovations that would disturb  
19 the vermiculite, hire professionals trained and  
20 certified to handle asbestos to safety remove the  
21 material". Would you agree with that  
22 recommendation?

23 A It depends on the circumstances.

24 Q What would those circumstances -- what  
25 would that depend on?

1           A     Well, it says if you plan to remodel or  
2     conduct renovations. I don't know. That  
3     encompasses a lot. If you put a ceiling fan in,  
4     that would be considered a renovation, and if the  
5     implication is if you are going to remodel and  
6     remove it at all, then it would be prudent to have a  
7     professional company come in and remove it.

8           Q     So you would agree with the proposition  
9     if, for example, you were adding a second story in a  
10    home, and you were going to remove all the general  
11    attic insulation, would you agree that the best  
12    practice would be to hire an abatement contractor to  
13    do that as opposed to trying to do it yourself?

14          A     I don't know that an abatement contractor  
15    would be required. I just think a competent  
16    contractor would be required.

17          Q     Let me ask you another way then, okay.  
18    Assuming you were going to add a second story to a  
19    home that had ZAI in the attic --

20          A     Yeah.

21          Q     -- and that was going to necessitate that  
22    you were going to remove all of the ZAI --

23          A     Right.

24          Q     -- would you recommend to a homeowner to  
25    employ somebody to do that who was trained in

1 removing asbestos containing materials as opposed to  
2 doing it -- to the homeowner doing it themselves?

3 A I would, strictly as a precautionary  
4 action.

5 Q And I think that falls right in line with  
6 the next precaution that, "You should never attempt  
7 to remove the insulation yourself. Hire  
8 professionals trained and certified to remove the  
9 materials".

10 A If the implication is that all the  
11 insulation is being removed, yeah, I would agree  
12 that it is better to hire someone competent to do  
13 it. If the implication is that you need to clear a  
14 place to -- to fix a plumbing leak, I think that a  
15 homeowner could do that without undue risk.

16 Q Do you have a cutoff, in your mind, in  
17 terms of an area -- a size area -- in which you  
18 would recommend that the homeowner could safely do  
19 it themselves versus needing to hire a trained  
20 professional?

21 A Not at the moment. At the moment I was  
22 thinking of complete removal versus minor  
23 renovations, but I don't have -- I don't have it  
24 defined.

25 Q In a circumstance where a homeowner was